

EXHIBIT 6

CONFIDENTIAL - HENRY S. FARBER
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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H. CRISTINA CHEN-OSTER; LISA
PARISI; and SHANNA ORLICH,
Plaintiffs,

10-CV-06950 (LBS)

VS.

GOLDMAN, SACHS & CO. and THE
GOLDMAN SACHS GROUP, INC.,

Defendants.

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C O N F I D E N T I A L

VIDEOTAPED DEPOSITION
OF

HENRY S. FARBER
New York, New York
Tuesday, November 19, 2013

Reported by:

AYLETTE GONZALEZ, CLR, RPR

JOB NO. 68152

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A. I think it's -- I think it's firm-wide recommendation system. The R -- again, the Rs are a little fuzzy for me.

Q. Okay. And did you -- do you remember looking at any PeopleSoft data in this case?

A. I did not personally look at the PeopleSoft data.

Q. You didn't personally look at any of the data is what I'm understanding?

A. Well, I did --

MR. KLEIN: Objection.

A. Let me -- that's not true.

Q. Okay.

A. I did not look at any of the raw data. I -- I asked my staff to create usable extracts from the raw data that we could use for analysis. And at that point, I looked at the data.

Q. And the -- the list -- the files that are listed here under "Electronic data" above the entries we've just been discussing, the ones that end with a ".do" --

A. Yes.

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Q. -- those are the instructions to the computer in the Stata program; is that correct?

A. Yes.

Q. So these are the -- these are the step-by-step instructions that your staff instructed, if you will, the -- the system to perform in order to create the data sets that you were going to -- or that they were going to use in the analyses, correct?

MR. KLEIN: Objection.

A. No. These are the instructions for the computer -- for the program Stata to do -- many of them are doing -- and some of them are doing data preparation, some of them are doing analysis.

Q. And as you understand it, is this the full list of the computer instructions; by "this," I mean, page 2 of Appendix B to Exhibit 2, the full list of programming instructions that you used or that underlay your -- your analyses?

A. What I can say is, I asked my staff to include in the backup all of the command

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files that we used in creating the data and running the analysis. And I do not have the -- personally since I didn't write the programs or create the databases, I can't as I sit here -- you know, I'd have to rely on my staff; the answer would be yes, these are the programs, but I can't verify that for you.

Q. Okay. And conversely, you wouldn't be able to tell me whether various other kinds of data were available in the materials produced to Plaintiffs' counsel that were not utilized in your studies; is that fair?

MR. KLEIN: Objection.

Q. In other words --

A. There's a lot of negatives in there.

Q. That's true.

You're aware that the -- that something on the order of 2,000 fields from CRS were produced to Plaintiffs' counsel in the case, are you not?

A. I do not know how many fields.

Q. You're aware certainly that the fields that are listed on Appendix B are a

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subset of the entire production of CRS data fields that were provided to Plaintiffs' counsel and thus to you, are you not?

A. I didn't know that, no.

Q. Okay. So you didn't look through any other data than what is listed on Appendix B in order to decide whether there were data elements that would be useful to you; is that right?

A. My staff did. I did not personally.

Q. Okay. And I'm not limiting that to CRS; I'm -- that would be accurate with respect to all of the databases that were produced by Goldman Sachs in this case, correct?

A. As I'm saying that my staff were the people under my instructions knew what I was looking for because I instructed them so went through the databases and pulled what -- what they felt was the rel- -- were the relevant fields. That's true of all the databases.

Q. Now, for the total compensation

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2 element that you study, I noticed in your
3 report you said that you used a table and you
4 annualized it. Do you remember that?

5 A. Yes.

6 Q. Okay. Now are you aware -- so that
7 was a field called "total compensation for
8 equity." Do you remember that being the name
9 of it?

10 A. No.

11 Q. Okay. Are you aware that there is
12 a field that was provided to Plaintiffs'
13 counsel called PATC that gives the annual
14 amount of total compensation set for a
15 particular individual?

16 A. I don't know the fields by name.

17 Q. Okay. But if you were looking to
18 see what somebody's annual compensation was
19 without the need to annualize it, you would
20 want to look at a measure of the PATC that was
21 set for that individual as of your snapshot
22 date, wouldn't you?

23 MR. KLEIN: Objection.

24 A. I'm not sure we're using the term
25 "annualize" in the same way.

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2 because that is the PATC set for that
3 individual as of your snapshot date, whether
4 they actually were paid all of it or not?

5 MR. KLEIN: Objection.

6 A. I was not aware of that.

7 Q. Okay. Let -- let me -- if -- so
8 if -- suppose somebody came to Goldman Sachs
9 midyear and you then had your -- the -- the
10 compensation element you're -- you're
11 describing, you would multiply that by two in
12 order to get their annual salary; is that
13 right?

14 A. What we were trying to do was --
15 we -- we never tried to get their annual
16 salary; we were looking at annual
17 compensation.

18 Q. All right.

19 A. So what we would -- we would do is,
20 look at the actual -- what -- the idea was to
21 look at the actual compensation paid to the
22 individual in the year, and that -- and then
23 inflate that to what it would have been had
24 they been there the entire year.

25 Q. Are you aware that if many -- that

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2 Q. Okay. Tell me what -- how you used
3 it.

4 A. We -- we may have used the PATC, I
5 don't know. What I -- the annualization is to
6 solve a relatively small problem in the data
7 and it's not something that you could get from
8 a field, I don't think, in the data that was
9 provided.

10 The idea is that if someone is
11 working only part year, perhaps because
12 they're on unpaid leave for part of the year,
13 so imagine they're on unpaid leave for six
14 months and got paid \$100,000 for the six
15 months they did work and nothing for the other
16 six months, they're going to show up in the
17 data as earning \$100,000 from Goldman. And
18 because what we're trying to do is ask what
19 would full-time annual compensation look like,
20 we would double the hundred thousand to
21 200,000 to convert it to an annual basis. And
22 that's what I meant by annualizing the data.

23 Q. And what I'm saying is, were you
24 aware that there's a field that would have
25 \$200,000 as the entry for that individual

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2 many laterals who came midyear received what
3 are called either sign-on or make-whole
4 bonuses?

5 A. I understood there was some of
6 that.

7 Q. And so if you took what the
8 individual earned in six months, that would
9 include that make-whole bonus, correct?

10 A. I'd have to -- I'd have to check
11 how we coded that. I don't know the answer to
12 that as I sit here.

13 Q. But will you agree with me that,
14 assume that the compensation element that was
15 used in your study merely took the total
16 compensation that the person was paid in the
17 year, including a sign-on or make-whole bonus,
18 just assume that for now; and if you doubled
19 that, you would be inflating their pay beyond
20 what they would have made in a year, correct?

21 MR. KLEIN: Objection.

22 A. I don't know how to answer that. I
23 would have to look at the circumstances and
24 check -- and take a look at the data before I
25 could answer that question.

<p style="text-align: right;">Page 102</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 model is identify those factors that were used</p> <p>3 by the company or that are proxies for factors</p> <p>4 taken into account by the company that explain</p> <p>5 pay for the employees in question?</p> <p>6 MR. KLEIN: Objection.</p> <p>7 A. I never think of it as factors used</p> <p>8 by the company. Peoples' pay is determined by</p> <p>9 the company, by the labor market and so on,</p> <p>10 and we -- we have a model of pay determination</p> <p>11 that's well accepted in labor economics that</p> <p>12 will -- will tell you that pay is a function</p> <p>13 of productivity of the workers that's often</p> <p>14 indicated by their skill level.</p> <p>15 So we control for education; we</p> <p>16 control for type of job people do; we control</p> <p>17 for, broadly speaking, what their business</p> <p>18 unit does and so on; where they're located.</p> <p>19 And those are the factors that wind up</p> <p>20 determining pay in a market setting.</p> <p>21 Q. Okay. When you use the word</p> <p>22 "business unit" there, were you using it as a</p> <p>23 term of art as applicable to Goldman Sachs?</p> <p>24 A. Yes, I suppose I was.</p> <p>25 Q. Okay. So you understood that the</p>	<p style="text-align: right;">Page 103</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 business unit was the level at which</p> <p>3 compensation recommendations and decisions</p> <p>4 were made?</p> <p>5 A. Well, I think I was less interested</p> <p>6 in that as -- than I was in the fact that the</p> <p>7 different divisions of Goldman Sachs had</p> <p>8 people performing somewhat different functions</p> <p>9 and you want to control in your model for the</p> <p>10 kinds of functions people are doing.</p> <p>11 Q. Are you aware -- you didn't control</p> <p>12 for any organizational structure or</p> <p>13 organizational subgroup other than -- other</p> <p>14 than division; is that right?</p> <p>15 A. I'm not sure what you mean by</p> <p>16 "organizational subgroup" or "division."</p> <p>17 Q. Well, you said you controlled for</p> <p>18 division in order to -- to capture different</p> <p>19 types of work. And what I'm asking you is,</p> <p>20 you didn't control, for example, for</p> <p>21 department or desk or business unit?</p> <p>22 A. I didn't control for department,</p> <p>23 desk or business unit, but I did control for</p> <p>24 variable, quote, job ID, which is the type --</p> <p>25 you know, is essentially the type of job a</p>
<p style="text-align: right;">Page 104</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 person's doing. So it wasn't just division,</p> <p>3 there's another variable in there, I think</p> <p>4 it's called job ID.</p> <p>5 Q. I think it's affirmative action</p> <p>6 plan job group; does that sound right?</p> <p>7 A. I don't know about the affirmative</p> <p>8 action plan, but it could be job group. Could</p> <p>9 be.</p> <p>10 Q. Were you aware that those were the</p> <p>11 affirmative action plan job groups?</p> <p>12 A. No.</p> <p>13 Q. And you're aware that affirmative</p> <p>14 action plan job groups aren't used for</p> <p>15 compensation purposes; isn't that right?</p> <p>16 MR. KLEIN: Objection.</p> <p>17 A. I'm not aware of that.</p> <p>18 Q. You're -- you're not familiar with</p> <p>19 the OFCCP regulations on what an affirmative</p> <p>20 action plan job group is meant to represent?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. And you're not familiar with</p> <p>23 the OFCCP guidance on how employees are to be</p> <p>24 grouped for studying compensation either, are</p> <p>25 you, or are you?</p>	<p style="text-align: right;">Page 105</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 MR. KLEIN: Objection.</p> <p>3 A. No, I'm not.</p> <p>4 Q. Okay. So if I told you that the</p> <p>5 OFCCP guidance during the years in question</p> <p>6 here advised employers to create something</p> <p>7 called similarly situated employee groups</p> <p>8 based on the way that compensation</p> <p>9 decision-making is actually made at the firm</p> <p>10 in question, would you have any reason to</p> <p>11 disagree with that?</p> <p>12 A. I -- I honestly don't know anything</p> <p>13 about that.</p> <p>14 Q. All right. Now, you wouldn't use</p> <p>15 the same model in terms of the factors you put</p> <p>16 into it for every employer, would you?</p> <p>17 A. Well, every employer wouldn't have</p> <p>18 five -- it wouldn't have divisions in the same</p> <p>19 way or -- or job groups. You have -- no, I</p> <p>20 wouldn't.</p> <p>21 Q. You have to look at how the jobs</p> <p>22 differ from one another at the given employer</p> <p>23 in order to decide how to group the employees,</p> <p>24 correct?</p> <p>25 A. Well, how to group the employees is</p>

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2 Q. Well, in other words, what the list
3 of affirmative action plan job groups is and
4 what they -- how they're described?

5 A. My understanding actually of the
6 job groups is, I never really had a
7 satisfactory -- I never really -- never
8 managed to find a satisfactory description of
9 what the job groups actually were. They were
10 numeric codes, but I don't -- I couldn't tell
11 you what any code was.

12 Q. Okay. And did you ask anybody to
13 try to get that information for you?

14 A. Yes.

15 Q. And what was the answer?

16 A. Couldn't get anymore information.

17 Q. Who told you that?

18 A. I asked my staff.

19 Q. And you didn't rule out the use of
20 any particular affirmative action job group
21 that you found in the data, did you, as being
22 inapplicable to this group of people?

23 A. I'm not sure what you mean. The
24 people were selected because they were in the
25 class, so I don't know -- they're all assigned

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2 to a job group, and I don't know what it would
3 mean to say that a job group was inapplicable.

4 Q. Well, suppose somebody in the class
5 moved out of a revenue-producing position in a
6 revenue division during the time frame you
7 were studying them; did you remove them from
8 the data for the years they were not in those
9 revenue-producing positions?

10 A. That was the plan. I'd have to
11 check the code to make sure that that
12 happened. But the idea would be that people
13 would only be in there for years they were in
14 revenue-producing units.

15 Q. So if you had looked at the
16 affirmative action plan job group and seen
17 that some of the job group codes that you used
18 said non-revenue producing, then that would
19 have told you that they were mistakes?

20 A. As I said, I don't have the -- my
21 translation of the job group codes to know
22 that.

23 Q. Okay. Did you look at the data to
24 see whether there were any other elements that
25 described type of work that you might use

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2 instead of the affirmative action plan job
3 groups?

4 A. To my knowledge, we did not find
5 such a field, whether -- I certainly did not
6 see one.

7 Q. Are you familiar with a field
8 called division function?

9 A. No.

10 Q. And so -- so you didn't consider
11 whether to use division function as a better
12 or an additional descriptor of type of work?

13 A. No.

14 Q. And are you familiar with the
15 levels of positions in PeopleSoft, such as
16 Level 6, 7, 8, 9?

17 A. No.

18 Q. And so I'm gathering you didn't ask
19 a question about whether that would have
20 properly or more effectively categorized
21 people into type of work in affirmative action
22 plan job group, correct?

23 A. I'm always -- in doing -- I will
24 say this: I tend in my work not to use things
25 like job level in the sense that that often is

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2 really -- in organizations I've seen, people
3 are put into job levels in order to pay them
4 the compensation you want to pay them.

5 So my instinct would be -- I'd have
6 to know more about what that variable is, but
7 my instinct would be that's a potentially
8 tainted variable and I wouldn't want to
9 categorize people that way.

10 Q. If -- if -- if -- if I told you to
11 assume that level at Goldman Sachs doesn't
12 bear any relationship to particular levels of
13 compensation, but rather to levels of
14 responsibility or management function, you
15 would then want to look into it at least to
16 see whether it --

17 A. I'd take a little bit of a look,
18 sure.

19 Q. Okay. And did you ever control for
20 whether somebody in the investment management
21 division was either in private wealth
22 management or in GSAM, Goldman Sachs Asset
23 Management?

24 A. We did not make that distinction.

25 Q. And you didn't exclude from your

<p style="text-align: right;">Page 122</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 MR. KLEIN: Objection.</p> <p>3 A. Well, first what I would want to do</p> <p>4 is explore what the variable was, what it</p> <p>5 meant and so on before I try to put it --</p> <p>6 which I do with all my data before I put it in</p> <p>7 the model.</p> <p>8 Q. And if you discovered that it was a</p> <p>9 measure that was used for all the employees in</p> <p>10 a particular group or performing a particular</p> <p>11 function, then you would want to include that</p> <p>12 in your model, correct?</p> <p>13 MR. KLEIN: Objection.</p> <p>14 A. No, I didn't -- not a particular</p> <p>15 group of performing a particular function.</p> <p>16 But for my -- the population as a whole that</p> <p>17 I'm interested in, I can't just have a</p> <p>18 productivity measure for some subset of them.</p> <p>19 What I've got to do is say, okay,</p> <p>20 for my group as a whole -- and this is why</p> <p>21 it's often very difficult to get a</p> <p>22 productivity measure you can use because</p> <p>23 you've got people performing different</p> <p>24 functions and the same productivity measure</p> <p>25 isn't relevant for -- and some of them may not</p>	<p style="text-align: right;">Page 123</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 have a productivity measure available; and as</p> <p>3 a result, you can't really use that</p> <p>4 productivity measure.</p> <p>5 Q. But you could certainly extract the</p> <p>6 population that has the same productivity</p> <p>7 measure and study that to see if that explains</p> <p>8 differences in pay, correct?</p> <p>9 MR. KLEIN: Objection.</p> <p>10 A. I -- if you were interested in the</p> <p>11 pay difference in that subgroup, you -- that</p> <p>12 would be an analysis one could do. I don't</p> <p>13 know how informative it would be, but it</p> <p>14 wouldn't help with the -- the population-wide</p> <p>15 question.</p> <p>16 Q. Well, obviously it would depend how</p> <p>17 large that subgroup was relative to the whole</p> <p>18 population, correct?</p> <p>19 MR. KLEIN: Objection.</p> <p>20 A. I don't know.</p> <p>21 Q. Okay.</p> <p>22 MS. BROWN: Let's take a break</p> <p>23 here because we're running out of</p> <p>24 tape.</p> <p>25 THE VIDEOGRAPHER: The time is</p>
<p style="text-align: right;">Page 124</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 11:57 a.m., and this completes Tape</p> <p>3 No. 1 of the videotaped deposition of</p> <p>4 Dr. Henry Farber.</p> <p>5 (Whereupon, an off-the-record</p> <p>6 discussion was held.)</p> <p>7 THE VIDEOGRAPHER: The time is</p> <p>8 12:23 p.m., and this begins Tape No. 2</p> <p>9 of the videotaped deposition of</p> <p>10 Dr. Henry Farber.</p> <p>11 BY MS. BROWN:</p> <p>12 Q. Dr. Farber, if I could draw your</p> <p>13 attention to page 2 of your report; again,</p> <p>14 that's Exhibit 2, Paragraph 5 contains the --</p> <p>15 the issues that you were asked to study in</p> <p>16 this case, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And you're not offering any</p> <p>19 opinion on anything other than the topics in</p> <p>20 that paragraph, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Now, you're -- when were you</p> <p>23 asked to study promotions from 2004 through</p> <p>24 2008 -- or really selections made in 2003</p> <p>25 through 2007, were you told why that period</p>	<p style="text-align: right;">Page 125</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 was truncated as compared to the other studies</p> <p>3 you were looking at?</p> <p>4 A. No.</p> <p>5 Q. Did you ask?</p> <p>6 A. No.</p> <p>7 Q. You're not -- you're not aware of</p> <p>8 any change in the promotion process at Goldman</p> <p>9 Sachs in 2008, are you, that would lead to a</p> <p>10 decision to drop those later years?</p> <p>11 A. No, I did not look at anything</p> <p>12 after the relevant period.</p> <p>13 Q. Well, the relevant period; that is</p> <p>14 to say, the period that counsel set for you to</p> <p>15 examine?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. What is the education of --</p> <p>18 of Mr. Ashmore, the educational</p> <p>19 qualifications?</p> <p>20 MR. KLEIN: I'm going to object.</p> <p>21 Is there a particular point to this</p> <p>22 question?</p> <p>23 MS. BROWN: Yeah. He's done a</p> <p>24 great deal of the work in this, and</p> <p>25 I'm entitled to know what his</p>

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2 they provide some for some of the workers.
3 And whether they're comparable or not, I
4 couldn't tell, I didn't study them that
5 closely. I knew there wasn't enough for me --
6 for my purposes.

7 Q. And why didn't you decide to study
8 the subset of employees for whom there was
9 production data separately from the others?

10 MR. KLEIN: Objection.

11 A. Because I was interested in a
12 measure of the pay difference at the
13 class-wide level, and I wasn't -- I didn't
14 want to be involved in doing an analysis for a
15 subgroup that I couldn't then say, okay, I can
16 now do the same thing for the rest of the...

17 Q. So your methodology here was to put
18 the entire population into one equation,
19 correct?

20 A. Yes.

21 Q. Okay. So you didn't do any
22 separate models by division, did you?

23 A. That's correct, I did not do any
24 separate models by division.

25 Q. And you didn't do any separate

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2 models by year, did you?

3 A. That is correct.

4 Q. And you didn't do any separate
5 models by vice presidents or associates,
6 correct?

7 A. That's correct.

8 Q. Now, it's -- there are standard
9 statistical tests that you can perform to see
10 if pooling a large population is appropriate;
11 isn't that right?

12 A. There are tests you can perform to
13 see whether the structure of the model differs
14 significantly across groups.

15 Q. And one of those tests is called a
16 Chow test, correct?

17 A. Yes.

18 Q. Or an F-test?

19 A. Yes.

20 Q. You didn't perform either of those
21 in this case, did you?

22 A. There are some F-tests that were
23 performed. I didn't -- I mean, I did some
24 F-tests, I don't -- I need you to rephrase the
25 question more precise.

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2 Q. Well, did you perform a Chow test
3 to detect differences, potential differences
4 within the group that would make a pooled
5 approach inappropriate?

6 MR. KLEIN: Objection.

7 A. Pooled by what?

8 Q. Pooled the entire population in one
9 regression.

10 A. As oppo -- you have to -- I need
11 you to state --

12 Q. Did you -- did you -- did you
13 perform a Chow test, let's just start with
14 that?

15 A. No.

16 Q. Okay. Now you said you performed
17 an F-test?

18 A. Yes.

19 Q. And what did that test?

20 A. There's an F-test you can per- --
21 every time you run a regression, you perform
22 an F-test simply to say whether the variables
23 included in the regression have significant
24 explanatory power.

25 Q. But that doesn't necessarily

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2 indicate whether it's appropriate to -- to
3 analyze the entire population together or
4 whether there's such variability within
5 subgroups that you need to study them
6 separately?

7 MR. KLEIN: Objection.

8 A. That's correct.

9 Q. Okay. So you didn't perform any
10 tests that would tell you that, correct,
11 whether --

12 A. That's correct.

13 Q. -- whether -- okay.

14 Just to be clear, you didn't
15 perform any tests to tell you whether it was
16 appropriate or inappropriate to study this
17 entire population together?

18 A. As opposed to?

19 Q. As opposed to breaking it by
20 division, year, status?

21 A. That's correct.

22 Q. Okay. Now on affirmative action
23 plan job groups, you had testified earlier
24 that you did not have an understanding of what
25 those specific groups were, correct?

<p style="text-align: right;">Page 138</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 A. That's correct.</p> <p>3 Q. Okay. And you're not aware of any</p> <p>4 testimony in the record or any documents in</p> <p>5 the record that suggests that affirmative</p> <p>6 action plan job groups are used or connected</p> <p>7 in any way to compensation setting at Goldman</p> <p>8 Sachs, are you?</p> <p>9 A. That's correct.</p> <p>10 Q. Okay.</p> <p>11 MS. BROWN: Why don't we take a</p> <p>12 lunch break at this point.</p> <p>13 THE VIDEOGRAPHER: The time is</p> <p>14 12:37 p.m. We are off the record.</p> <p>15 (Whereupon, an off-the-record</p> <p>16 discussion was held.)</p> <p>17 (Luncheon break taken.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 139</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 A F T E R N O O N S E S S I O N</p> <p>3</p> <p>4 (Time noted: 1:48 p.m.)</p> <p>5</p> <p>6 THE VIDEOGRAPHER: The time is</p> <p>7 1:48 p.m., and we are back on the</p> <p>8 record.</p> <p>9 H E N R Y S. F A R B E R, resumed and</p> <p>10 testified as follows:</p> <p>11 EXAMINATION BY (Cont'd.)</p> <p>12 MS. BROWN:</p> <p>13 Q. Dr. Farber --</p> <p>14 A. Can I -- I did a little checking at</p> <p>15 lunch. I just want to -- simply about</p> <p>16 Appendix B and was it a complete list of the</p> <p>17 data we used. And so, I checked with my staff</p> <p>18 over lunch and it is, so there's really</p> <p>19 nothing to worry about that.</p> <p>20 Q. Okay. Anything else you checked on</p> <p>21 or want to correct?</p> <p>22 A. No.</p> <p>23 Q. Or reaffirm?</p> <p>24 Let me turn your attention to page</p> <p>25 24 in your report, paragraph 64, the</p>
<p style="text-align: right;">Page 140</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 discussion of promotion.</p> <p>3 We talked a little bit earlier</p> <p>4 about the fact that you did not analyze</p> <p>5 promotion decisions made in 2008 and</p> <p>6 thereafter, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And that the process, as you</p> <p>9 understand it, didn't change at that point in</p> <p>10 time or you don't personally know that it did,</p> <p>11 correct?</p> <p>12 A. I don't know whether the process</p> <p>13 changed or not.</p> <p>14 Q. So, you're not actually studying a</p> <p>15 particular process or practice with respect to</p> <p>16 promotions, you're just looking at the bottom</p> <p>17 line results; is that right?</p> <p>18 MR. KLEIN: Objection.</p> <p>19 A. What I'm doing is asking the</p> <p>20 question of whether women were as likely or</p> <p>21 less likely than men to be promoted from</p> <p>22 associate to vice-president over that period.</p> <p>23 I'm sorry, from vice president to managing</p> <p>24 director. I apologize.</p> <p>25 Q. Understood, but there's no specific</p>	<p style="text-align: right;">Page 141</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 process that you're actually analyzing?</p> <p>3 A. No.</p> <p>4 MR. KLEIN: Objection.</p> <p>5 A. It is not a process analysis.</p> <p>6 Q. Okay. Now, the statistical model</p> <p>7 you use in this section is a probit model,</p> <p>8 correct?</p> <p>9 A. Correct.</p> <p>10 Q. Now, that's analogous to a</p> <p>11 regression model except that you're looking at</p> <p>12 a discreet outcome such as a promotion,</p> <p>13 correct?</p> <p>14 A. I don't know if I would use the</p> <p>15 word, "analogous." It's a different</p> <p>16 procedure. And that was called a maximum</p> <p>17 likelihood procedure. And it is appropriate</p> <p>18 for models where the outcome is a discreet</p> <p>19 variable.</p> <p>20 Q. But -- but similar to a regression,</p> <p>21 you can put factors into the model that might</p> <p>22 explain the results for the population so that</p> <p>23 you're comparing people who are similarly</p> <p>24 situated with respect to the likelihood of</p> <p>25 receiving that outcome, right?</p>

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Q. So, you were assuming that the entire group was the same and you were not interested in looking at any factors that might differentiate subsets of that group from one another in terms of either how they're compensation is set or the factors that influence their pay, correct?

MR. KLEIN: Objection.

A. No. As I said, my model includes measures that control for where the worker is situated in the firm and it controls for variation across workers in many factors; time at Goldman Sachs. In some of the models, performance, you know, quartiling and so on. Frankly, the quartiling variables take account of a lot of this in terms of, you know, where the worker is situated in the firm and how they're doing and what they're producing even.

Q. In what way does the quartile that you studied take account of what employees are producing?

A. Well, the point is that the -- the criteria that are used -- the criteria that are used, as I understand it to assign workers

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to quartiles, you know, include things like contribution to the firm. And as a result, that's a -- that's a measure of worker performance.

Q. So, suppose you were asked to study wage differences in a real estate sales office and the actual agents got commissions and the people who worked in the office and -- and spoke to prospective sellers or buyers were not on commissions.

If you were studying pay in that group, you would not, based on what you've said right here, you would not put commissions into that model any different than salary; is that right?

MR. KLEIN: Objection.

A. I don't know how to understand -- you're asking me now to come up with a hypothetical of how -- you know, to respond to a hypothetical analysis for a group of workers I've never thought about. I don't think I can do that sitting here.

Q. But what you're telling me is that, at least in the Goldman Sachs population, you

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did not look for questions that might or factors that might illuminate differences among subgroups, you only looked at ones that you believe were common to the entire group; is that right?

MR. KLEIN: Objection.

A. I looked at -- I included factors in the model that I could measure for all members of the group that -- that were relevant.

Q. And if -- you read testimony that managers looked at production data in deciding the compensation, the individuals for whom that data exists, correct?

A. I read that managers considered how, you know, the contribution of the worker confirmed performance and the worker's potential and other factors, yes.

Q. But you also saw that they considered the actual business results in terms of the production numbers of the type that were made available to you, correct?

A. Depending on -- maybe for those workers for whom such numbers were available,

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but there are many workers for whom those numbers are not relevant.

Q. Did you look, for example, in the securities division to see what percentage in that division of individuals had production numbers?

A. No.

Q. And had it been a substantial percentage, would you have considered running a separate analysis for that division?

A. No. I told you I did not -- I did not consider running separate analyses for different subgroups of workers. I just did not consider that.

Q. And you wouldn't -- there's no percentage, short of a hundred percent, that you were interested in looking at in terms of whether there were measures that applied to a subset of the employees, correct?

Isn't that what you just said?

A. Not quite, no. For example, when I move from my analysis, my first analysis of compensation to the analysis of compensation that includes the performance measures, I lose

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 getting at. So, someone graduates from high school and one person decides to enlist in the Army and another person decides to work at McDonald's?

Q. Let's talk about here. What about people making a choice about the types of jobs that they want to work in?

A. That would certainly would be related to their pay, yes.

Q. And in -- you're aware of studies, are you not, about gender differences in job choice?

A. I'm aware of studies of gender differences in job holding.

Q. And you?

A. It's an open question as to how much of that is choice and how much of that is -- is opportunities available to people.

Q. And you didn't do any study at Goldman Sachs of gender differences in job type or in function that the employees are performing, did you?

A. That's correct.

Q. Now, you're also aware that there's

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 evidence that women leave jobs more regularly than men for personal reasons; isn't that right?

A. I'm aware that men change jobs more than women.

Q. Did you -- did you realize that you had access in the data that was provided to you to exit interview surveys of employees leaving Goldman Sachs?

A. I was not.

Q. Okay. And you would want to look at those to see what the reasons were that people reported their -- their departures from the firm, wouldn't you?

MR. KLEIN: Objection.

A. For what purpose?

Q. Well, wouldn't you agree with me that people who leave either to pursue education or for family reasons might well have been working less hard in the period of time before they depart than people who leave to get a better job, for example, or be paid more?

A. I have no idea.

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 Q. You've never seen any general --

A. My experience with women, frankly, that they're more consciousness than men. So I could just as well spin a theory that goes the other way, that women work hard to the last minute. The man gets another job, he says, I'm going to kiss it off for the last month. It could go either way. I honestly -- you know, I'm not studying the exits. I don't know why I would look at the exit interviews.

Q. And you didn't look at any statistics about people transferring out of revenue producing jobs into administrative jobs, did you?

A. I did not.

Q. Okay. And that would be something you might want to see if you were looking at whether, on average, women, more than men, were -- were leaving jobs where they had to produce revenue?

MR. KLEIN: Objection.

A. I'm not studying exit from jobs, so I don't know why I would -- why I would undertake this whole line of analysis.

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 Q. Well, you're aware of studies in the labor market, generally, that men work more hours a week than women, aren't you?

A. Women are more likely to work part-time than men. I know that.

Q. But even for full-time employees, you're aware of the literature that men work more hours per week than women; is that right?

A. I've actually not seen that literature. It wouldn't surprise me that that was the result. I'm moment quarreling with you, just, I have not seen that myself.

Q. And you don't have any knowledge about how hard or how many hours people are putting in to job-related activities at Goldman Sachs, do you?

A. At home -- oh, at Goldman Sachs.

Q. At Goldman Sachs.

A. No, I don't.

Q. Okay. You didn't do any taint analysis of any of the processes or criteria that are used at Goldman Sachs to set compensation or make promotion decisions, did you?

<p style="text-align: right;">Page 202</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 MR. KLEIN: Objection.</p> <p>3 A. I'm saying that's simply a</p> <p>4 characteristic of the world we live in.</p> <p>5 Q. Now, in your -- by doing your model</p> <p>6 with the entire population together, you are</p> <p>7 assuming that there -- there's only one affect</p> <p>8 for each variable that operates for all the</p> <p>9 employees on average, correct?</p> <p>10 A. That's correct.</p> <p>11 Q. Now, if you separated employees</p> <p>12 into separate equations, then those variables</p> <p>13 would have different effects based on the</p> <p>14 return, if you will, that that variable</p> <p>15 provides on pay, correct?</p> <p>16 A. I would say if I estimated separate</p> <p>17 models for different subgroups, I would get</p> <p>18 different estimates for the coefficients, yes.</p> <p>19 Q. Let's talk about tenure. If a year</p> <p>20 of tenure is worth more or less depending on,</p> <p>21 for example, whether you're a vice-president</p> <p>22 or an associate, then pooling them together</p> <p>23 will give you almost -- will muddle the affect</p> <p>24 of that variable, correct?</p> <p>25 MR. KLEIN: Objection.</p>	<p style="text-align: right;">Page 203</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 Q. For any one individual.</p> <p>3 A. It will tell you something about</p> <p>4 the average affect.</p> <p>5 Q. But in other words, if two groups</p> <p>6 differ in terms of the impact of the affect on</p> <p>7 pay of the variable, putting them together in</p> <p>8 one equation will somewhat overstate or</p> <p>9 understate the value of that variable for a</p> <p>10 set -- a subset of the population, correct?</p> <p>11 MR. KLEIN: Objection.</p> <p>12 A. It could.</p> <p>13 Q. Okay. Now -- so that here, for</p> <p>14 example, if you had two people, one of whom</p> <p>15 was a trader for whom years of service was not</p> <p>16 particularly relevant to pay because that</p> <p>17 person had the skill or the aptitude for</p> <p>18 trading and you have someone else whose a vice</p> <p>19 -- whose an employee in investment banking,</p> <p>20 for example, where increased tenure and</p> <p>21 seniority on the team gives you opportunities</p> <p>22 for clients, contact that you wouldn't have</p> <p>23 when you were junior. And you put those two</p> <p>24 together in one equation, you would be looking</p> <p>25 at the value of tenure for the two of them</p>
<p style="text-align: right;">Page 204</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 together, right? You would get one return?</p> <p>3 A. Yes.</p> <p>4 Q. And that might grossly misstate the</p> <p>5 value of tenure for the trader versus the</p> <p>6 banker, couldn't it?</p> <p>7 A. It could misstate it.</p> <p>8 Q. Let me show you what we have -- and</p> <p>9 you didn't check here by running any equations</p> <p>10 on separate subsets of the entire population</p> <p>11 whether you were misstating the affect of any</p> <p>12 of your variables on substantial subsets of</p> <p>13 the group, did you?</p> <p>14 A. I did not estimate a model on</p> <p>15 subsets.</p> <p>16 Q. Let me show you what we're going to</p> <p>17 mark Exhibit 12.</p> <p>18 (Farber Exhibit 12, Stata Command</p> <p>19 File, marked for identification, as of</p> <p>20 this date.)</p> <p>21 BY MS. BROWN:</p> <p>22 Q. Dr. Farber do you recognize what we</p> <p>23 marked as Exhibit 12?</p> <p>24 A. This is one of the do files that I</p> <p>25 provided.</p>	<p style="text-align: right;">Page 205</p> <p>1 CONFIDENTIAL - HENRY S. FARBER</p> <p>2 Q. And if you look at the bottom of</p> <p>3 the second page, where it says, "keep employee</p> <p>4 I.D."?</p> <p>5 A. Yes.</p> <p>6 Q. And do you see in there that job</p> <p>7 code description is there?</p> <p>8 A. Yes.</p> <p>9 Q. And also division function</p> <p>10 description?</p> <p>11 A. Yes.</p> <p>12 Q. And also department and department</p> <p>13 description?</p> <p>14 A. Yes.</p> <p>15 Q. Do you have any explanation for why</p> <p>16 you put these factors into the data set that</p> <p>17 you created and then never used them?</p> <p>18 MR. KLEIN: Objection.</p> <p>19 A. Let me look and see what this -- I</p> <p>20 don't have a detailed explanation. I think I</p> <p>21 simply felt that the specification -- the</p> <p>22 specification that I was using was a good</p> <p>23 specification. I didn't want to -- you know,</p> <p>24 we have -- which variables -- we're talking</p> <p>25 about division? No, job code.</p>

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mean separate studies?

A. No, I did not.

Q. And you understand that most of the maternity leaves are, in fact, paid leaves, correct?

A. Yes.

Q. Okay. So, you're not making any opinions about how Goldman Sachs treats women taking maternity leave with respects to pay?

A. That's correct.

Q. Let me go back a little bit to paragraph 16 again where you described earnings.

I think you'd already described to me how the employee compensation is set, but let me just ask you when you say it's set through common firm-wide processes, what's your basis for that -- that understanding or for that statement?

A. Well, I think basically at the end -- you know, it comes from reading -- you know, reading the depositions and so on and figuring out that recommendations for salaries come, of course, from a lower level, but

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they're all reviewed through some common -- through some process at higher levels.

Q. But what is it that made you believe that that was common across -- that process was common across this group?

A. Simply because the review is at a high level which makes it common because there's a common high level in the firm. That's the way I think about it.

Q. You never actually -- I think we discussed before; you never looked at what decisions were either changed or modified in any way after they were made by the first level managers, did you?

A. That's correct.

Q. Okay. And that's the full understanding that led to your -- that's all the facts that led to that sentence in your report?

A. Yes.

Q. If you did a study by business unit and year and you saw wide variability in the results for gender, would that undermine your confidence and the opinions that you've drawn

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about compensation?

MR. KLEIN: Objection.

A. Repeat the question, please.

Q. Sure. If you did a compensation study by business unit and you -- and year and you found wide variability in the results for gender, assuming you had groups large enough to study, would that undermine your confidence that there's a common pattern across the group?

MR. KLEIN: Objection.

A. I'm not sure I understand what you mean by business unit.

Q. Business unit is an organizational level at which the budgets are allocated for compensation setting. So --

A. Can you give me an example?

Q. Sure. America's One sales.

A. Okay. That doesn't help.

The answer is I'd have to look at it, but probably -- probably not. When you break the sample up into small pieces, you're going to get a lot of variability in the estimates. That comes from the fact that as

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the sample gets smaller, the -- the random component because the tail that wags the dog.

And what you really want to do -- and as a result, you're going to get a lot of imprecision and it's going to look like results are quite different. And it doesn't shake my confidence in what the overall affect might be -- overall average affect might be.

Q. But you didn't -- I think you've said this, you didn't do any studies to see whether there were business units large enough to study that would have led you to modify your opinion about whether there is a gender difference here across the whole group?

MR. KLEIN: Objection.

A. I did not. As I've said, I did not do analysis of smaller groups.

Q. Okay. Now, in paragraph 22, you say that there was a change in 2009 that allowed employees who took a leave of absence to count toward the division distribution --

A. Yes.

Q. -- of quartile, correct?

A. Yes.

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2 hypothetical that there were a finite number
3 of promotions, that would be true, you'd have
4 to reallocate the promotions that's you saw.

5 Q. And if you did that, the benchmark
6 against you -- against which you would be
7 assessing whether women had received the share
8 of promotions to which you believe they're
9 entitled would be -- have be to adjusted,
10 wouldn't it?

11 A. I'm not sure what you mean by
12 benchmark.

13 Q. In other words, the percentage that
14 derives your number of 20 would actually have
15 to be adjusted if you had to reallocate some
16 of the male promotions to women?

17 A. Well, I would start by the
18 observation that my reading of the record is
19 that there's not necessarily a defined number
20 of promotions to managing director. And --
21 but the -- the specifics of your question is
22 if you held the number of promotions constant
23 at -- I'm sorry, I don't have -- I can't do
24 the arithmetic, but if you multiply -- if
25 someone has a calculator -- 6,128 by .0568,

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2 which is the promotion rate for men times the
3 number of observations for men, that gives you
4 the actual number of promotions for men. And
5 then added the 68 promotions for women and
6 then allocated them at the same rate for men
7 and women roughly or, you know, use --
8 adjusted the model that way because six --
9 roughly 6 percent of 6,000 is 360 promotions.
10 Figure 360ish promotions for men, I'm just
11 guessing, plus 68 promotions for women is
12 about 425 promotions in all.

13 I wouldn't have to adjust my
14 benchmark expected promotions for women down
15 very much because most of the promotions are
16 going to men in the first place. So, in other
17 words, in order to not -- in other words, only
18 -- I would -- how would I get it?

19 About a fifth of the promotions go
20 to women now. No, less than that. A sixth of
21 the promotions go to women.

22 In the real world, a sixth of the
23 promotions went to women. There were about
24 350 motions to men and 68 promotions to women.
25 So about -- I know Mike can do arithmetic so

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2 I'm watching him.

3 And so, about a sixth of the
4 promotions go to women which would lead me to
5 believe you would have adjust the shortfall by
6 about three to four months, but not by very
7 much.

8 Q. And you don't know what that would
9 do to the T-statistic, do you?

10 A. I don't believe it would change the
11 T-statistic at all.

12 Q. But you haven't run that analysis,
13 have you?

14 A. No, I'm not making a -- a
15 theoretically econometric argument that I
16 don't think it changes the T-statistic. But I
17 would have to do the analysis, you're right.

18 Q. Back in paragraph 26 where you're
19 describing promotions, you do say that Goldman
20 decides how many people each division may
21 promote each year and finalizes the list in
22 conversation with the division leaders. So
23 that whoever was writing this background for
24 you --

25 A. Which page?

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1 CONFIDENTIAL - HENRY S. FARBER
2 Q. Page 10, paragraph 26. You
3 understand that there is a set number that --
4 that each --

5 A. Yes. What I don't know if there's
6 any interaction between the list themselves
7 and the number of promotions that Goldman
8 decides to make. In other words, it doesn't
9 -- it doesn't say here that Goldman first
10 decides how many people they want to promote
11 and then goes through the whole tapping on the
12 shoulder and crossruffing process and then
13 just promotes the people that they say. They
14 may, in fact, adjust the total number of
15 managing directors they want to create after
16 they see what the list looked like.

17 Q. And --

18 A. I don't know.

19 Q. And this is all total speculation
20 on your part, correct?

21 A. Not all of it. Just that one
22 little piece of it.

23 Q. Let me -- let me just say you keep
24 using the phrase, "tap on shoulder." By that
25 you mean nomination. Nomination website,